

## **DRAFT**

### **WIND AND PRAIRIE TASK FORCE Siting Guidelines/Standards Related to Wind Development in Kansas and the Flint Hills Public Forum Handout**

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Presented below are guidelines that counties may consider as wind-energy projects are being developed. While still in draft form, these guidelines are intended to be comprehensive in addressing realistic issues, both positive and negative, that these developments bring to communities.

The guidelines have been developed in response to three of the task force's charges:

- “to recommend guidelines, principles, and best practices to be utilized at the local level to help site wind energy projects”(Charge #2);
- “to recommend voluntary local siting guidelines for wind-energy development” (Charge #4); and
- “to develop tools that can be used in the decision-making process to site wind-energy projects” (Charge #5).

The following guidelines are intended as tools to help county planners, wind developers, and residents. Some counties may find they are more extensive than needed; others may choose to implement the entire set and possibly add some additional requirements. It is anticipated that appendices in the task force report will contain at least two examples of guidelines developed by Kansas counties.

#### **State Context**

The authority to regulate or control land use is granted to local governments by the power of the State. The statutes outline how land-use control is to be accomplished at the local level. Cities and counties in Kansas vary with regard to the exercise of this power. Numerous counties in Kansas have chosen not to adopt zoning or subdivision regulations. In several instances, the State has decided to dictate or preempt local authority with regard to land-use control. A few examples are:

- Control over State-owned property,
- Control over oil and gas wells,
- Control over siting of group homes,
- Control over siting of certain manufactured housing, and
- Control over agricultural uses.

Given the state context, various approaches are possible for regulating commercial wind-energy development at the local, regional, or State level. The following is a summary of possible options at the county levels of government.

## **DRAFT**

### **Unzoned Counties – Options**

1. Status Quo – Unzoned counties may simply choose to not regulate the siting of wind-energy development. Under this option, the ultimate decision on siting of wind-energy development will remain with the developers and landowners, either individually or collectively.
2. Adopt Zoning - Unzoned counties may decide to utilize their statutory authority to adopt zoning regulations, which could then be used to regulate wind-energy development. If a county chose this option, they could adopt zoning regulations for the entire county, a portion of the county, or cooperate with a city to zone a portion around a city. If they chose to adopt zoning regulations, they would have to:
  - follow the process specified in K.S.A. 12-741 et seq.,
  - create and appoint a Planning Commission,
  - prepare and adopt a Comprehensive Plan, and
  - prepare and adopt zoning and subdivision regulations in accordance with the public hearing process.

CAUTION: Zoning and subdivision regulations must be enforced to be effective. Counties are advised not to pursue these regulations unless they are prepared politically and financially to enforce them using local staff and/or the local court system.

3. Special Legislation – Unzoned counties may be able to utilize a licensing requirement, building codes, or some other special legislation to control or regulate certain aspects of a wind-energy development. Check with local counsel to determine whether or not these alternatives are available and advisable.
4. Moratorium – Unzoned counties may adopt a moratorium on wind-energy development to allow sufficient time to study alternatives and to determine whether or not regulation of wind-energy development is necessary or desired. If a county decides to adopt a moratorium it should be for a specified and limited amount of time (e.g., six months or one year) and should state the reasons for the action (e.g., to study the issues and determine options or to adopt zoning regulations, etc.).

## **DRAFT**

### **Zoned Counties Options**

Counties that already have some form of zoning have the option of either using their existing zoning regulations to guide wind-energy development or adopt regulations that are specific to such development. Zoned counties should first review their current zoning regulations to determine how wind-energy developments are handled. If they are not specifically mentioned in the regulations or if they are listed as a permitted use without any public review process, the county may want to consider developing special regulations to regulate wind-energy developments.

Following is a general checklist of issues/concerns to be considered in regulations for wind-energy development.

1. **Definitions** – At the very least, wind-energy regulations need to define the difference between commercial and non-commercial projects. A definition of total height and how it is measured should also be included.
2. **Application Process and Procedures** – The regulations should outline the application and hearing process and should specify, in some detail, the type of information that should be requested as part of the application for a wind-energy development. If it doesn't already exist, the county should consider a zoning process that enables the elected officials to make the final decision. Specific types of information that counties may want to consider requiring in an application include:
  - A site plan with sufficient detail to understand the nature and scope of the proposed project and the attributes of the specific location;
  - A visual impact assessment that will provide a simulation of how the project will look from various vantage points;
  - An environmental assessment to include:
    - wildlife and wildlife habitat;
    - noise impacts;
    - soil erosion and dust;
    - safety issues;
    - water quality and quantity;
    - historic, cultural, and archeological impacts;
    - fire risks (e.g., grassland fires at site); and
    - other impacts of local importance
  - An economic assessment to include:
    - tax revenues and public infrastructure enhancements required;
    - business and job generation;
    - impact on tourism; and
    - other areas of local importance.
  - A visual simulation of the project from various vantage points surrounding the site;
  - A decommissioning and reclamation plan to include:
    - when and under what circumstances decommissioning and reclamation occurs;
    - the expected end of the project life;
    - how the decommissioning and reclamation plan is secured (e.g., bonds, contract).

## **DRAFT**

3. Project Guidelines/Standards – Counties should consider developing guidelines or standards in the following categories:
  - Visual
    - tower color and tower layout
    - buffer zones
    - ridge line versus lower land areas
    - lighting requirements on tower
  - Noise
  - Safety
    - set back requirements
    - access to the site by roads
  - Environmental (considered but not limited to)
    - Soil erosion
    - Water quality
  - Natural and biological
    - Fauna and Flora (e.g., endangered plants)
    - Wildlife and Biology
  - Historical and cultural archeological resources
  - Regional Impact
    - broader impacts that result from a county or region with multiple projects
  - Air quality
  - Ice throwing and blade glint
4. Developer Plan Mitigation Assessment – As part of the application fee, counties may want to consider requiring developers to pay for the following third-party review:
  - Expertise contracted to review and verify application or parts of the application
  - Expectations that if complaints surface that expenses of a determination will be funded by developer
  - *Create a budget and a plan for enforcement at the local level*